ssm

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

COMPANY PETITION NO. 704 OF 1999

Rachana Plasticizers ...Petitioners

Vs.

Mansukh Industries Ltd. ...Respondents.

Mr. N.K.Shah i/by Mr. K.D.Shah i/by M/s. Munim & Co. for the petitioners.

Mr. S. Ramakantha, Depty Official Liquidator present.

ALONG WITH

COMPANY PETITION NO. 228 OF 1999

Rajendra Chemexport Pvt. Ltd. ...Petitioners

Vs.

Mansukh Industries Ltd. ...Respondents.

Mr. M.J. Devani for the petitioners.

Mr. S. Ramakantha, Depty Official Liquidator present.

CORAM : ANOOP V. MOHTA,J.

DATED : 20th September, 2007.

P.C.

1. The petitioners have invoked the provisions of Section 433, 434 of the Companies Act as inspite of the service of statutory notice the respondents company failed to make the payment of the amount due and payable.

2. On 19/10/1997 the petitioners sold and supplied to company goods under their Bill No. 409/1997 dated x 19/10/1997.

3. On 26/03/1998 the company gave cheque for Rs.2,02,960/- dated 26/03/1998 drawn on Bank of India, Ghatkopar Branch towards the said Bill. The petitioner when put the said cheque in Bank for encashment, the same was dishonoured with Bank's endorsement 'exceeds arrangement'.

4. On 04/04/1998, the petitioner through its advocate wrote a letter dated 04/04/1998 calling upon the company to pay the said amount of Rs.2,02,960/- together with interest at 24% per annum. However, the company failed to pay the said amount or reply to the said letter.

5. On 22/04/1999, the petitioners through its advocate write another letter dated 22/04/1999 calling upon the company to pay the said amount together with interest at 24% per annum, failing which the petitioner will inter-alia taken winding up proceedings against the company.

6. The company has failed to pay, its debts, to the petitioners and is unable to pay the same. Hence the present petition.

7. This Court on 15/07/1999 accepted the petition and notice was served to the respondent company returnable 19/08/1999. On 14th December, 1999 after hearing the respondent company, the petition was admitted by this Court. The petitioner based upon that complied all the formalities including the advertisement. The respondent company through their advocate waive the notice also.

8. The petitioner pursuant to the order passed by this Court dated 14/07/2007 filed an affidavit confirming the proof of publication dated 15th July, 2005. In the result all the necessary formalities as required under Rule 28, Companies (Court) Rules 1959, in view of this is not necessary.

9. In view of **Skol Breweries Ltd. Vs. Sanman Distributors Pvt. Ltd., AIR 1999 BOM. 249** after considering the Rule 27, 28 and 31 of Companies (Court) Rules (1959), this Court has observed specifically in para 9 as under:-

. "I have also no hesitation to hold that the procedure in the manner laid down under Rules 27 and 28 has to be mandatorily followed and complied with on admission of winding up petition save and except where at the time of admission of winding up petition, the company is represented by its Advocate and the notice is waived or is dispensed with by the Court, otherwise notice to the company has to be issued and served in winding up petition in accordance with the provisions contained in the Company Court Rules. Failure to comply with the procedure as required under Rules 27 and 28 unless ordered otherwise by the Court may entail in dismissal of the company petition under Rule 31 and that also indicates the mandatory nature of Rules 27 and 28. The procedure contemplated by Rules 27, 28 and 29 cannot be permitted to be substituted by self-invented procedure of sending intimation about the admission of winding up petition to the company by the petitioning creditor. Such exercise of intimation is no service in the eye of law on face of mandatory provisions of Rules 27 and 28."

10. In this back-ground the fact remains that there is no affidavit of the respondents to the averments made through out, and there is not even reply to the statutory notice.

11. The company, M/s. Mansukh Industries Ltd. had invoked the provisions of SICA Act and the companies were before the BIFR. Therefore, the present matter alongwith other matters adjourned from time to time .

By order dated 12th June, 2000 the said BIFR petition was dismissed. The appeal against the said order was also dismissed on 23rd October, 2000.

12. In another company petition No. 228 of 1999, the petitioner therein against the same respondent company also preferred the company petition under the same provisions as inspite of the service and demand respondent company unable to make the payment. One additional factor in this matter is that the respondent company had arrived compromise and in fact filed the consent terms some time on 16th August, 1999. As inspite of the said consent terms, there were defaults and therefore this Court by order dated 20th December, 1999 has appointed the provisional Official Liquidator in company petition No. 228 of 1999. The appointment order of provisional liquidator is also remained intact till this date. In view of the advertisement already made in company petition No. 704 of 1999, the advertisement was dispensed with.

13. In the result, in this petition also all the legal formalities have been complied with. In this back-ground the things remained that the respondent company through-out firstly, inspite of the consent

terms and secondly, till this date not controverted or disputed any claims as raised by the petitioners, in all these petitions. The appointment of provisional liquidator, is also fortified the same. Taking all this into account, this is a fit case where the company petition need to be allowed in terms of prayer clause (a), (b) and (e). The company petition No. 704 of 1999 made absolute, accordingly.

14. The company petition No. 228 of 1999 in view of this is also allowed in terms of prayer clauses (a), (b) and (c).

15. To complete the facts and to avoid further complications in the matter as there were no proceedings available on record, these two petitions are disposed of in above terms.

16. In this back-ground, in all other petitions which are tagged and clubbed together, the separate order have been passed.

17. The petitions are disposed of accordingly.

(ANOOP V. MOHTA, J.)